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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,553	03/29/2004	Yehia A. Massoud	309.420	8288
38137	7590	11/19/2007	EXAMINER	
ABELMAN, FRAYNE & SCHWAB 666 THIRD AVENUE, 10TH FLOOR NEW YORK, NY 10017			STOKES, CANDICE CAPRI	
ART UNIT		PAPER NUMBER		
3732				
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/810,553	MASSOUD, YEHIA A.
	Examiner	Art Unit
	Candice C. Stokes	3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 August 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 8-28 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 23-28 is/are allowed.
- 6) Claim(s) 8-10, 12-15, 20 and 22 is/are rejected.
- 7) Claim(s) 11, 16-19 and 21 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 August 2007 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Greenberg (USPN 5,746,743). Greenberg discloses a bur (see Fig. 4) capable of being used to perform a Caldwell-Luc osteotomy comprising an elongated shaft (2) having opposing first and second ends, said first end configured for insertion into a rotary device; a cutting blade (36) coupled to the second end of said shaft; and a depth guide (200) extending transversely from said shaft and spaced a predetermined distance from the distal end of said cutting blade. Regarding claim 22, said depth guide is configured to interface with a surgical guide comprising a curvilinear-shaped structure for placement adjacent said lateral wall of the maxillary sinus, said curvilinear-shaped structure having a window for exposing a corresponding portion of said lateral wall of the maxillary sinus to perform said osteotomy, said window being formed by a plurality of peripheral edges that define a ledge, said curvilinear structure and window being dimensioned and shaped based on a treatment plan for said patient which includes a CT scan and three-dimensional imaging that characterizes a plurality of walls defining the maxillary sinus and maxillary bone of the patient in three dimensions, and said depth guide configured to interface and traverse along said ledge of said window of the surgical guide.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1) Claims 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenberg (USPN 5,558,622). Greenberg discloses a surgical guide (54) capable of being used for performing a Caldwell-Luc osteotomy to penetrate a lateral wall of a maxillary sinus of a patient comprising: a curvilinear-shaped structure (56). The portion of the claim "for placement adjacent said lateral wall of the maxillary sinus" is a recitation of intended use. Greenberg further teaches the curvilinear-shaped structure (56) having a window (60). The portion of the claim "for exposing a corresponding portion of said lateral wall of the maxillary sinus to perform said osteotomy" is also a recitation of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Greenberg disclose the invention as claimed in claim 8 except for said curvilinear structure and window being dimensioned and shaped based on a treatment plan for said patient that includes a CT scan and three-dimensional imaging which characterizes a plurality of walls defining the maxillary sinus and maxillary bone of the patient in three dimensions. It would have been obvious to one having ordinary skill in the art at the time of the invention to make the surgical guide being shaped and dimensioned to perform the intended, since a change in shape and dimension or size

is within the level of ordinary skill in the art. To claim 9, said curvilinear-shaped structure (56) includes a lower portion having a surface (59) capable of being positioned over at least one of a portion of an alveolar ridge of the maxillary bone and adjacent teeth of said patient; and an upper portion (where "56" is shown) extending upward from said lower portion. The portion of the claim "for positioning adjacent to said lateral wall of the maxillary sinus" is a recitation of intended use and has been treated accordingly. As to claim 10, said upper portion includes said window (60). The limitation "for exposing a corresponding portion of said lateral wall of the maxillary sinus" is also a recitation of intended use. Further to claim 10, said window (60) being formed by a plurality of peripheral edges that define a ledge adapted for interacting with a cutting device (see Fig. 17 where drill "D" interacts with what is considered to be a ledge). Regarding claim 12, Greenberg does not teach the structure being made from an acrylic material. However, it would have been an obvious matter of design choice to use an acrylic material or any material suitable for performing the intended use. To claims 13 and 15, refer to Figure 4 which shows the rectangular window (60).

Allowable Subject Matter

Claims 11,16-19, and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 23-28 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the prior art fails to disclose said ledge varies in thickness based on a thickness of a boney wall lateral to said maxillary sinus; the treatment plan comprising at least one panoramic, coronal, sagittal and three-dimensional view of the maxillary sinus and maxillary bone structures of the patient; the cutting device being a bur as claimed in claim 17; and the depth guide traverses said shaft a distance in a range of approximately 5-10mm from distal end of the cutting blade all in combination with the base claim and any intervening claims. Regarding claims 23-28, the prior art fails to disclose or reasonably teach the method as claimed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candice C. Stokes whose telephone number is (571) 272-4714. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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